

**UNAPPROVED MINUTES
of the
THIRTY-FIFTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 19, 2011
Room 322, State Capitol
Santa Fe**

The thirty-fifth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on December 19, 2011 at 9:15 a.m. in Room 322, State Capitol.

Present

Rep. Rick Miera, Co-Chair
Sen. Vernon D. Asbill
Dr. Carl Foster
Ms. Cecilia Grimes
Mr. Leonard Haskie
President Pro Tempore Timothy Z. Jennings
Rep. Larry A. Larrañaga
Speaker Ben Lujan
Mr. Antonio Ortiz

Absent

Sen. Cynthia Nava, Co-Chair
Secretary-Designate Tom Clifford
Rep. Donald E. Bratton
Dr. Lisa Grover
Mr. Robbie Heyman
Sen. Lynda M. Lovejoy
Mr. Kilino Marquez
Rep. W. Ken Martinez
Sen. George K. Muñoz
Ms. Lilliemae Ortiz
Mr. Mike Phipps
Ms. Judy Rabon
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Staff

Sharon Ball, Senior Researcher, Legislative Council Service (LCS)
Leslie Porter, Research Assistant, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
Lisa Sullivan, Staff Attorney, LCS
Rachel Gudgel, Senior Fiscal Analyst, Legislative Finance Committee (LFC)
Frances Ramirez-Maestas, Director, Legislative Education Study Committee (LESC)

Guests

A copy of the guest list is in the meeting file.

Monday, December 19

Bonding Capacity Available for Authorization, December 2011 Estimate

Leila Burrows, economist, LFC, said the State Board of Finance (BOF) and the LFC staffs have updated the fiscal year 2012 (FY12) severance tax bond capacity estimates to reflect the December 2011 consensus revenue estimates as well as capital projects approved during the 2011 special session. She said the BOF and the LFC estimate a senior long-term capacity of \$187.7 million in FY12. She said that this amount was calculated to ensure that — given current revenue assumptions — the same amount can be issued in each of the next 10 fiscal years. Given this long-term capacity, she said the senior sponge capacity will be \$76.5 million and the supplemental sponge capacity will be \$148.7 million. She reminded task force members that, during the 2011 special session, Senate Bill 10 authorized \$81 million in capital projects to be funded through senior bond proceeds and that of this amount, \$15 million was authorized for the Aamodt and Navajo Nation water rights settlements in short-term sponge bond notes and approximately \$51 million was issued as long-term senior bonds. She noted that the \$13.6 million authorized for a new human services information technology system was not issued because the project is not ready. She said that, after subtracting authorized but unissued capacity earmarked for the Water Project Fund, the Tribal Infrastructure Project Fund and the Colonias Infrastructure Project Fund, the estimated net senior bond capacity is \$130.3 million with a supplemental bond capacity of \$148.7 million for a total net capacity of \$279.1 million.

In response to comments and questions from task force members, Ms. Burrows said that the BOF and the LFC used the following assumptions to calculate the FY12 capacity estimates:

- calculation of severance tax revenue using December 2011 consensus revenue estimates;
- recent rises in price estimates for oil have increased severance tax revenue estimates;
- severance tax revenue is projected to decline in the "out" years;
- senior long-term capacity remains relatively consistent with the October 2011 estimate. The failure to pass capital outlay legislation in the 2011 session created lower debt service, minimizing the impact of declining long-term revenue;
- the interest rate was lowered to 2.75% to account for current market conditions and future expectations; and
- debt issuance remains level.

Ms. Burrows explained that, because SB 218, which would have approved \$237.8 million in capital projects, failed to pass the 2011 legislative session, there may be an opportunity to boost FY12 tax bonding capacity above the traditional estimate. She said that the executive and legislative staffs will need come to agreement on capacity estimates before the 2012 session.

In response to questions about possible general obligation bonding capacity for voter approval during the 2012 general election, Ms. Burrows explained that current capacity is approximately \$298 million.

Update on Progress of Adequacy Standards Development for the New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (NMSBVI)

Robert A. Gorrell, director, Public School Facilities Authority (PSFA), told the task force that because the draft standards had just been completed during the previous weekend, he has not thoroughly reviewed them.

Ms. Ramirez-Maestas complimented the PSFA and the special schools for the work done. She said these standards, once finalized, will serve as a model for the country, because New Mexico is at the forefront of this.

Richard Gorman, project manager, NMSD, expressed his gratitude to the PSCOOTF and the PSFA. He said the draft standards are fair and equitable in comparison to how public schools are treated. He explained that only 35% of NMSD and NMSBVI facilities are eligible for the PSFA financing, meaning that 65% of the facilities must obtain funding from other sources. He said this fact is his primary concern, since the special schools have no bonding capacity.

PSCOOTF members discussed the unique funding situation in that the special schools treat students who are eventually sent back to public schools. Mr. Gorman clarified that the NMSD students are full-time students who live on campus. Mr. Gorrell clarified that the draft standards account for the students who attend the facility on a full-time basis.

Members of the task force, the PSFA and Mr. Gorman discussed whether or not the land grant funding received by the special schools can be used for anything other than operational costs. Mr. Gorman stated that those funds are strictly used for operational costs. The determination was that the funds could be allocated to other uses but have not been. Ms. Ball explained to the task force that state statute requires that a public school district must demonstrate that those funds have met the district's operational needs before those funds may be used for anything but that purpose.

The discussion shifted to charter schools and their use of those funds to pay rent. Ms. Ramirez-Maestas stated that there will be 84 charter schools in New Mexico in the upcoming school year. Task force members discussed the difference between state-chartered and locally chartered charter schools. The task force discussed the ability for state-chartered charter schools to request funding from a local school district and the likelihood of this situation not occurring. The policy challenges surrounding virtual charter schools, including the one operating out of Farmington, and the challenges facing state-chartered charter schools who draw students from around the state were discussed.

Conversation shifted back to the special schools and the costs of financing all of the projects on both campuses. Mr. Gorrell stated that this would cost \$40 million to \$50 million, and if the Public School Capital Outlay Council (PSCOC) were to fund everything, with no local share for the support spaces, that cost would be about 15% to 20% of available PSCOC capital

funds for all public schools. Mr. Gorrell also said that if the special schools developed a method to collect the 50% local match requirement, the impact of PSCOC capital funds would be reduced to less than 5%.

Report: PSCOOTF Subcommittee on Request for Proposals Procurement

Robert A. Gorrell, Director, PSFA

Dotty McKinney, contracts administrator, PSFA, explained that the following items to be heard were addressed by the subcommittee, and were concerns brought forth to the PSFA with respect to the request for proposals (RFP) process. She and Tim Berry, assistant director, PSFA, introduced, offered a brief background and explained the subcommittee's recommendations on the following items:

- I. web-based RFP for construction procurement system;
- II. weighting and scoring;
- III. interviews versus discussion, scoring of interviews, "local 'local'" preference;
- IV. qualifications of potential committee members and access;
- V. subcontractor qualification and local preference logistics;
- VI. best and final offer; and
- VII. protest period.

Ms. Ball brought forth specific concerns of the General Services Department and of the Associated General Contractors (AGC) of America, which were elaborated on at the November 19, 2011 meeting of the PSCOOTF subcommittee, emphasizing a concern about statutes and rules governing implementation of the Procurement Code. Addressing these concerns, Mike Puelle, director of public policy and government relations, AGC, stated that his client's objection is to the term "markets your firm", and feels it should be eliminated, for it is too limiting. In response, Mr. Berry said that the PSFA will work on the language and that the intent is not to eliminate all forms of marketing on behalf of the contractors. Discussion ensued concerning this language, including a discussion about whether a contractor who buys a cup of coffee for a PSFA staff member is giving a gift to the agency or one or more of its staff or if a contractor is considered to be giving a gift to the PSFA or to the selection committee on a particular project. Mr. Gorrell clarified that the PSFA's intent is to minimize activities such as repeated golf games purchased to benefit a project owner. Jeep Gilliland, lobbyist, National Electrical Contractors, suggested enacting a price floor as to when this would go into effect. He said this issue needs deeper research conducted. He and Steve Crespin, electrical contractors' union representative, suggested guidelines be developed for the "local 'local'" preference. Mr. Berry stated that this definition would be well-defined by each procurement on what the project owner considers that to be. Mr. Crespin said he supports the AGC's letter.

Extensive conversation took place among task force members and PSFA staff concerning the subcommittee recommendations.

Discussion of Proposed PSCOOTF-Endorsed 2012 Legislation

Noting the lack of a quorum, Representative Miera suggested the task force operate as a subcommittee and asked staff to poll PSCOOTF members on any decisions made by the task force functioning as a subcommittee.

Bill Draft #1: *Repealing the delayed repeal for the Charter School Capital Outlay Fund; and*
Bill Draft #2: *Delaying the repeal date of the Charter School Capital Outlay Fund; repealing the reversion of unencumbered balances*

Ms. Ball explained the bill drafts. She said the 5.8% of the average market value price will automatically be repealed in FY12 and the distribution will go down to 5.5% through FY 16. In response to task force discussion and questions, Mr. Berry stated that statute prohibits the PSFA from funding state-chartered charter schools until their first renewal cycle, which is five years after their creation. Mr. Ortiz explained that the fund was created by the PSCOOTF to give state-chartered charter schools the equivalent of their local match for the completion of their master plans. Mr. Berry added that if there are no state-chartered charter schools eligible for this fund, as is now the case due to the five-year renewal cycle, its funds can be used to aid locally chartered charter schools.

Upon a motion by Mr. Ortiz, seconded by Dr. Foster, and with none opposed, Bill Drafts #1 and #2 were endorsed by the subcommittee. Ms. Ball clarified that Bill Draft #1 will repeal the repeal to maintain the fund.

Bill Draft #3: *Making the NMSD and the NMSBVI eligible for Public School Capital Outlay Act funding; exempting these institutions from the required local share of project funding; and*
Bill Draft #4: *Making the facilities at the NMSD and the NMSBVI eligible for Public School Capital Outlay Act funding; exempting these institutions from the required share of project funding under certain conditions.*

Ms. Ball explained the proposed legislation. Task force members and PSFA staff discussed the options. Ms. Ball noticed a technical fix to be done on Bill Draft #4, should it be endorsed. Mr. Gorman stated that Bill Draft #3 is a simple approach and raises issues of inequity and said that Bill Draft #4 allows the legislature to have more flexibility in dealing with the local match issue and better addresses equity.

Upon a motion made by Speaker Lujan, seconded by Senator Asbill, and with none opposed, Bill Draft #4 was endorsed by the subcommittee, with the technical fix and other necessary editorial corrections.

A motion to endorse Bill Draft #3 was not made.

Bill Draft #5: *Amending the Public School Buildings Act to allow mill levy proceeds to be used for the purpose of meeting local match requirements for Public School Capital Outlay Act grants.*

Ms. Ball explained the legislation and its origination. Points of clarification were made and discussion ensued among task force members and staff.

Upon a motion made by Speaker Lujan, seconded by Mr. Haskie, and with Senator Asbill, President Pro Tempore Jennings and Representative Larrañaga voting in the negative, the subcommittee endorsed Bill Draft #5.

Bill Draft #6

Ms. Ball suggested an additional piece of legislation, not prepared for today's meeting, to address the RFP issues. She said the task force would have to request that the governor include this in her call for the upcoming session, since 30-day sessions are typically strictly for budget issues and the items on the governor's call.

Upon a motion made by Dr. Foster, seconded by Ms. Grimes, and with none opposed, the suggestion to draft Draft Bill #6 was endorsed by the subcommittee.

Approval of September and October Minutes

Upon a motion made by Senator Asbill, seconded by Representative Larrañaga, and with none opposed, the minutes from the September and October meetings of the PSCOOTF and the October and November minutes of the PSCOOTF subcommittee were adopted.

Adjournment

There being no further business before the task force, the thirty-fifth meeting of the PSCOOTF adjourned at 12:10 p.m.